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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-193131

DATE: June 5, 1980

MATTER OF: Forrest C. Harris - Pay Adjustment
for Supervisors

DIGEST: General Schedule employee who received pay adjustment effective January 21, 1979, as supervisor of prevailing rate employee with higher pay rate may not be granted retroactive pay prior to that date. Entitlement to pay adjustment is within discretion of agency since there was no mandatory agency policy to make adjustment and there was no abuse of discretion which warrants retroactive compensation. Employee has 6 years from date services were first performed to file petition in Court of Claims.

This decision is in response to the appeal by Mr. Forrest C. Harris of our Claims Division Settlement No. Z-2413460 dated May 31, 1979, as clarified by letter of October 30, 1979, denying his claim for retroactive pay adjustment as a supervisor of wage board employees.

Mr. Harris is employed by the Defense Property Disposal Service (DPDS), Defense Logistics Agency, Fort Lewis, Washington, as an Assistant Property Disposal Officer, GS-11. Mr. Harris has supervised a wage system employee from October 15, 1976, to the present. In June 1978 Mr. Harris requested that his pay be adjusted to a step above that of the wage system employee he was supervising. Such adjustment is authorized by 5 U.S.C. § 5333(b) (1976). His request was initially denied on the basis that the subordinate wage system employee's position was misclassified and slated for downgrading upon vacancy. However, upon a subsequent request from Mr. Harris, his claim was reevaluated and approved effective January 21, 1979. Mr. Harris has received the adjusted rate since that date.

Mr. Harris has requested retroactive backpay for the period October 15, 1976, to January 21, 1979. His claim was denied by the DPDS on the basis that the applicable regulations provide for a discretionary rather than a mandatory increase. Our Claims Division reached the same conclusion based on a decision of this Office, Arnold J. Glaz, B-165042, December 21, 1978. Mr. Harris has stated that that decision is not applicable here

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since the employee in that case was not granted an increase and he was. We disagree since the principles of law enumerated there are applicable here: (1) entitlement to a pay adjustment under 5 U.S.C. § 5333(b) is within the discretion of the agency, and (2) absent a mandatory agency policy, a failure to grant such pay adjustment does not constitute an abuse of discretion error which would warrant retroactive compensation.

Mr. Harris has also said that his agency has recommended that he be granted backpay. This contention is based on a message marked "received August 9, 1979," from the Defense Property Disposal Regional Office, Ogden, Utah, to DPDS, Battle Creek, Michigan. The message does contain a recommendation that Mr. Harris be granted backpay. However, the Director, Office of Civilian Personnel, DPDS, Battle Creek, Michigan, and the headquarters of the Defense Logistics Agency in Alexandria, Virginia, both recommended that backpay be denied on August 8, 1979, and October 2, 1979, respectively. Further, we were informally advised that Ogden, Utah, was merely a service center and not authorized to make such a determination.

Under the authority of 5 U.S.C. § 5333(b) (1976), a General Schedule employee may be paid at a step rate above that to which the employee is otherwise entitled when the employee supervises prevailing rate employees whose rate of basic pay is higher. The implementing regulations promulgated by the Civil Service Commission (now Office of Personnel Management) are set forth in title 5 of the Code of Federal Regulations, part 531, subpart C, and provide, in pertinent part:

"§ 531.303 Use of authority.

"In determining whether to use the authority under section 5333(b) of title 5, United States Code, and this subpart, an agency shall consider (a) the relative rate-ranges of the supervisor and the wage board employee supervised by him as well as the specific rate either is receiving at the time, and (b) the equities among supervisors in the same organizational entity as well as the equities between supervisor and the wage board employee supervised by him."

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"§ 531.305 Adjustment of rates.

* * * * *

"(c) Effective date. The adjustment of a supervisor's rate of pay under this subpart is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment under section 5333(b) of title 5, United States Code, and this subpart."

Under the above-cited authority, the supervisor is not entitled to a pay adjustment based solely on a determination that he supervises prevailing rate employees who have basic pay rates in excess of the supervisor's rate of basic pay. The decision to grant an employee a pay adjustment under 5 U.S.C. § 5333(b) is within the discretion of the agency. Dorothy R. Greathouse, B-191523, September 5, 1978.

Decisions of this Office have permitted retroactive pay adjustment for such supervisors where the agency has failed to follow a mandatory agency policy which mandates a pay adjustment under certain circumstances. Billy M. Medaugh, 55 Comp. Gen. 1443 (1973), and John O. Johnson, B-186896, November 2, 1976. The Defense Logistics Agency has implementing regulations in its DLA Regulation No. 1416.8, paragraph IVc. However, it merely provides guidelines which correspond to those in the Civil Service Commission regulations, and does not set a mandatory policy in regard to pay adjustments for supervisors. In the absence of such a mandatory provision, the decision to grant or to increase a pay adjustment is within the discretion of the agency.

The DPDS exercised its discretion when it granted Mr. Harris a pay adjustment in January 1979, to be effective on the date prescribed by regulation. Where agency action is committed to agency discretion, the standard to be applied by the reviewing authority in reviewing such action is whether the action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Harold E. Levine, 54 Comp. Gen. 310 (1974). Based upon the record before us, we find nothing which

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would establish that there was an abuse of discretion in denying Mr. Harris a retroactive pay adjustment during the period in question.

Accordingly, the Claims Division settlement which disallowed Mr. Harris' claim is sustained.

Mr. Harris also requests information as to the applicable date for computing the 6-year statute of limitations for court suits. Section 2501, title 28, United States Code (1976), provides that every claim of which the Court of Claims has jurisdiction shall be barred unless the petition is filed within 6 years after the claim first accrues. The claim would accrue on the date the services in question were first performed. Richard C. Clough, 58 Comp. Gen. 3 (1978).



For the Comptroller General
of the United States